

ISSUE

Does the State of Wisconsin Code of Judicial Conduct require a sitting judge to be subpoenaed to appear as a fact witness?

ANSWER

No.

FACTS

The judge has received a request to testify in a neighboring county by one of the attorneys representing a party in that case. The judge is believed to have factual information that may be relevant to the dispute. The stated purpose for the judge's testimony is to explore his knowledge as a private citizen.

DISCUSSION

We have determined that the governing code provision is SCR 60.03(2). SCR 60.03 requires, generally, that a judge avoid impropriety and the appearance of impropriety in all the judge's activities. SCR 60.03(2) specifically provides:

. . . A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may not testify voluntarily as a character witness.

A comment to SCR 60.03(2) states that:

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. . . A judge may, however, testify when properly summoned.

Since the Rule only limits a judge from testifying as a character witness voluntarily, that is, without being subpoenaed (or summoned), it is our opinion that a judge does not violate the Rule by voluntarily agreeing to testify as a fact witness if, in so agreeing, the judge does not act in a way that may lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge.

CONCLUSION

The Committee concludes that a judge may voluntarily testify as a fact witness.

APPLICABILITY

This opinion is advisory only. It is based on the specific facts and questions submitted by the Petitioner to the Judicial Conduct Advisory Committee and is limited to questions arising under the Supreme Court Rules, Chap. 60, *Code of Judicial Conduct*. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, Sub-Chapter III, of Chapter 19 of the statutes.

I hereby certify that this is Formal Opinion No. 09-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 30th day of January, 2009.

/s/ George S. Curry

The Honorable George S. Curry, Chair